IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3316 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ONGC EMPLOYEES CO.OP AND CONSUMER SOCIETY LTD

Versus

GY MALEK

Appearance:

1. Special Civil Application No. 3316 of 2004

MR BS PATEL for Petitioner No. 1-5,7-8

MRS RANJAN B PATEL for Petitioner No. 1-8

MR MUKUL SINHA for Petitioner No. 6

MR BAIJU JOSHI for Respondent No. 1-10

MR DIPEN DESAI, AGP for Respondent No. 15

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 05/10/2004

ORAL JUDGEMENT

#. Rule. Mr.Shirish Joshi, learned advocate, waives service of rule on behalf of respondent Nos.1 to 10 and Mr.Dipen Desai, learned AGP, waives service of rule on behalf of respondent No.15.

#. With the consent of the learned advocates for the parties, the matter is taken up for final hearing today.

#. In this petition filed under Article 227 of the Constitution of India, the petitioners have challenged the legality and validity of the judgment and order dated 20.2.2004 passed by the Gujarat State Cooperative Tribunal ("the Tribunal" for short) by which the Tribunal has not only restrained the elected members, but directed to hold fresh election in the revision application which was arising out of the interlocutory order passed by the Board of Nominees.

#. The election of the ONGC Employees Cooperative Credit and Consumer Society took place which came to be challenged before the Board of Nominees by way of Lavad Case No.1326 of 2003 by respondent no. 1 to 10. In the said suit, application exh. 5 was submitted restraining the petitioners and elected office bearers from functioning as the members of the aforesaid society. The Board of Nominees, Vadodara vide its order dated 11.12.2003 dismissed the said application below exh. 5. Being aggrieved and dissatisfied by the same, respondent nos. 1 to 10 had preferred revision application no. 507 of 2003 before the Tribunal. The Tribunal not only set aside the order below exh. 5 passed by the Board of Nominees, Vadodara dismissing the application exh.5 but also passed the order restraining the elected members from taking any policy decision and further directed the District Registrar to hold the election of the society afresh within a period of two months. Being aggrieved and dissatisfied with the judgment and order dated 20.02.2004 passed by the Tribunal in revision application no. 507 of 2003, the petitioners have preferred the present Special Civil Application.

#. Mr.B.S.Patel, learned advocate appearing on behalf of the petitioners, has submitted that the Tribunal ought not to have passed the order of holding a fresh election unless and until the suit filed by the original plaintiff in which the validity of the election is challenged is allowed and the election is set aside. He submitted that in the revision application which is arising out of the interlocutory order below exh.5, the Tribunal ought not to have and could not have passed the order of holding fresh election unless and until the election is set

aside. He has relied upon the judgment of this court in the case of Chandulal Tribhovandas Kotha V/s Surendranagar People Cooperative Bank reported in 1997 (1) G.L.H. (UJ) 6.

#. Mr.Joshi, learned advocate appearing on behalf of respondent nos. 1 to 10 has tried to support the judgment and order passed by the Tribunal. He submitted that looking to the fact that an illegality is found by the Tribunal, the Tribunal was justified in directing to hold fresh election and requested to dismiss the petition.

#. Heard the learned advocates for the respective parties.

#. It is an admitted position that in the suit before the Board of Nominees in which the election of the petitioners and the office bearers of the society is pending, the application exh.5 restraining the elected office bearer came to be rejected and it was against that order the revision application was preferred before the Tribunal. Unless and until the election of the petitioners i.e. office bearers of the society is set aside, the Tribunal could not have passed the order of holding a fresh election. The suit is yet to be decided on merits and the legality and validity of the election of the petitioner i.e. office bearers of the society is yet to be considered by the Board of Nominees. Considering the judgment and order passed by this Court in the case of Chandulal Tribhovandas Kotha (supra), the judgment and order passed by the tribunal dated 20.02.2004 in revision application no. 507 of 2003 is required to be quashed and set aside and is accordingly quashed and set aside. However, in the facts and circumstances of the case, the Board of Nominees, Vadodara is directed to decide and dispose of the Lavad Case No.1236 of 2003 as early as possible and in any case, within a period of three months from the date of the receipt of writ of this order, subject to cooperation by all the parties. Until the suit is decided, ad-interim relief granted by this court on 05.05.2004 in the present petition is directed to be continued.

#. This petition is allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R.Shah,J)

(pathan)